

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 VS.

CR. NO. 15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 3

9 Transcript of Omnibus Proceedings before
10 The Honorable James O. Browning, United States
District Judge, Albuquerque, Bernalillo County,
11 New Mexico, commencing on May 11, 2017.

12 For the Government: Ms. Maria Armijo; Mr. Randy
Castellano; Mr. Matthew Beck

13 For the Defendants: Mr. Brock Benjamin; Mr. Richard
14 Sindel; Ms. Cori Harbour-Valdez; Mr. Robert Cooper;
Mr. Roberto Albertorio; Mr. Orlando Mondragon; Mr.
15 Noel Orquiz; Mr. Scott Davidson; Mr. Billy Blackburn;
Mr. Santiago Hernandez; Mr. Steven Potolsky; Mr.
16 Richard Jewkes; Ms. Amy Jacks; Mr. Josh Spencer; Mr.
B. J. Crow; Mr. Marc Lowry; Ms. Theresa Duncan; Ms.
17 Amy Sirignano; Mr. Christopher Adams; Mr. Michael
Davis; Mr. Ryan Villa; Ms. Justine Fox-Young; Mr.
18 Donovan Roberts; Ms. Erlinda Johnson; Ms. Angela
Arellanes; Mr. Samuel Winder; Mr. Don Kochersberger;
19 Ms. Susan Burgess-Farrell; Mr. Diego Esquibel; Mr.
Marc Grano; Mr. Ahmad Assed; Mr. Gregory Acton

20
21 For the Defendants (Via telephone): Ms. Carrie
Bhalla
22
23
24
25

1 THE COURT: Good morning everyone. I
2 appreciate everyone making themselves available to me
3 this morning. I'll switch seating charts here.

4 All right. We'll continue the hearings
5 that we've had this week. Yesterday we were down to
6 just the -- what I call the DeLeon case, and then the
7 Baca case. Let me see if I can confirm who is here
8 as far as attorneys. Let's see, Ms. Morrissey is not
9 here today, and Mr. Acton, you're here alone; is that
10 correct?

11 MR. ACTON: I am, Your Honor.

12 THE COURT: And Mr. Creecy is not here.
13 You're back, Mr. Winder; is that correct?

14 MR. WINDER: Yes, Your Honor.

15 THE COURT: All right. Mr. Winder, good
16 morning to you.

17 And let's see, I want to confirm for the
18 record, Ryan Villa was not here at all yesterday;
19 correct?

20 MR. VILLA: I was not, Your Honor.

21 THE COURT: But you're here today?

22 MR. VILLA: I am.

23 THE COURT: Good to see you, Mr. Villa.

24 MR. VILLA: You, too.

25 THE COURT: Mr. Castle is gone for today;

1 is that correct, Mr. Cooper?

2 MR. COOPER: That's correct, Your Honor.

3 THE COURT: All right. Mr. Cooper, good
4 morning to you.

5 MR. COOPER: Good morning to you, Judge.

6 THE COURT: Let's see, we've got Ms.
7 Sirignano and Mr. Adams. Patrick Burke is not here
8 for Mr. Troup, but you're here, Ms. Harbour-Valdez?

9 MS. HARBOUR-VALDEZ: Yes, Your Honor.

10 THE COURT: Good morning to you, Ms.
11 Harbour-Valdez, Mr. Troup.

12 And Nate Chambers is not here for Mr.
13 Alonso, but you're here, Mr. Orquiz?

14 MS. ORQUIZ: Yes, sir.

15 THE COURT: Good morning to you,
16 Mr. Orquiz.

17 Let's see. All right.

18 A couple of things to be thinking of before
19 we break today. I did mention to you that I wanted
20 to talk to you about what work you want me to do.
21 We've got one more motion to sever to argue today.
22 I'm inclined to -- I made a lot of rulings on motions
23 to sever, and I still got one more to argue. Then we
24 have one more. I think Burke has one next Friday
25 that we're going to argue. But at least for the ones

1 that have been argued so far -- that will be argued
2 today -- I'm inclined to roll those into one opinion.
3 So rather than just quickly getting out the one I'm
4 pretty far on, I'm inclined to put them all together,
5 so that I can explain why I'm doing what I'm doing
6 with these trials. So that's my thoughts. But you
7 may want me to shift to something else. So, again,
8 be thinking of the batting order that you want to
9 leave with me before we part today and come back next
10 week.

11 Also, I will want to -- with the first
12 group of the DeLeon people, I want y'all to be
13 thinking about a real timeframe for the trial of that
14 case. Because the trial of that case is going to
15 really impact, really, my second half of the year.
16 However long that takes, that's realistically what
17 I've got to line up for the other what we call the
18 SNM cases, as well as other work that I have. So be
19 thinking and discussing a real timeframe. Because
20 once I set it, I probably am going to get it tried
21 within that timeframe.

22 On the 19th, it doesn't look like we need
23 the Baca people at all. I don't see any items that
24 need to be argued. So I think we'll just be bringing
25 back the DeLeon people on that Friday. So unless

1 somebody thinks otherwise, that's my plan for the
2 present time.

3 All right. Mr. Lowry, you were up arguing
4 your bill of particulars, if you wish to continue
5 that argument.

6 MR. LOWRY: Thank you, Your Honor.

7 THE COURT: Mr. Lowry.

8 MR. LOWRY: Your Honor, I just had one
9 brief evidentiary matter.

10 Your Honor, just to follow up a point that
11 I made yesterday. And we're talking about DeLeon
12 Bates No. 14478, and this would be Confidential Human
13 Source No. 3. But the point I was making, Your
14 Honor, is this notion that the younger generation
15 was, for lack of a better way to say it, was trying
16 to "off" all the older members.

17 THE COURT: All right.

18 MR. LOWRY: And again, Your Honor, just for
19 clarification, it does mention the All Stars. This
20 is about the All Star faction.

21 But, Your Honor, I put some thought into
22 the Court's comments at the end of the day yesterday,
23 and if the Court looks at our reply brief, I don't
24 disagree with the Court one iota, in that Mr. Baca is
25 not trying to manipulate or weasel into this bill of

1 particulars a discovery device or mechanism. We
2 recognize that, and we don't disagree that that's an
3 improper use for the bill of particulars.

4 But what we are trying to accomplish in the
5 bill of particulars is for a fixed indefinite theory
6 of the Government's notion of how this alleged
7 enterprise was structured.

8 And the problem I'm having with where I
9 stand before Your Honor today is, instead of fixed
10 indefinite, I'm in the middle of fluid and mercurial.
11 And I think the purpose of the bill of particulars is
12 to put a defendant on notice of what the case is so
13 he can defend against it. And in that vein, what
14 we're looking for is a fixed indefinite idea of what
15 the theory of the enterprise is so I can start
16 preparing a defense. And that's, you know, where
17 we're coming from.

18 And I think if you go back to our reply
19 brief and look at the six questions that we laid out
20 that we'd like the bill of particulars to address,
21 they really aren't "who" questions, except in the
22 last one, I laid out six on page 7 and 8 of the
23 brief, but they're all "how" questions. So I hear
24 what Your Honor is saying, and I want the Court to
25 clearly understand that what we're looking for is

1 more of a functional result here, and not necessarily
2 a "who" test. Who did what? That having been said,
3 Your Honor, sometimes the "whos" will have to come
4 out in that test. And this is the United States
5 Supreme Court in Will v. United States, at 389 U.S.
6 90, and you can see it here at the page break 98 and
7 99. But our Supreme Court has acknowledged and
8 recognized for decades that -- and I'll quote -- "It
9 is not uncommon for the Government to be required to
10 disclose the names of some potential witnesses in the
11 bill of particulars where that information is
12 necessary or useful to the defendant's preparation
13 for trial."

14 Now, I'm not yielding -- we're not looking
15 for a discovery device. But what I am looking for is
16 a fixed target. And what the indictment has said --
17 I look at the indictment, and I look at paragraph 4
18 of the indictment, it was fairly fixed. "The SNM
19 operated under a panel." "The," singular, of this
20 alleged organization, and "a single panel." And we
21 haven't seen any evidence in the discovery to support
22 that.

23 What we have seen, in my view, is what I've
24 characterized in our briefing is sort of a variation
25 on the federalist. We haven't seen the congress that

1 control the SNM. What we've seen is a balkanized
2 series of local states. And what I'm really looking
3 for here in the bill of particulars is how was this
4 enterprise structured? And they've alleged one
5 thing, and they backed off on that in the direct
6 testimony before this Court, and they backed off of
7 it in their briefing before this Court. So I'm at a
8 loss to understand how they want to move forward with
9 their theory about how this enterprise was
10 structured. And that's really what we're seeking
11 here, Your Honor, with regard to our argument
12 concerning the alleged enterprise. Because if
13 they're talking about, you know, a constellation of
14 subgroups, as opposed to an umbrella organization,
15 that's -- I think that's a problem for the
16 Government, but that's something we need to know for
17 certain, so we have sufficient notice to prepare our
18 defense.

19 And I don't know if that answers Your
20 Honor's question directly, or if you want me to be
21 more specific. But I've laid out the questions I
22 would like to have answered on page 7. And the first
23 one was, you know, how the co-defendants functioned
24 as an enterprise, apart from the racketeering
25 activity, meaning how did these individuals share

1 interpersonal relationships, common interests; how
2 did they function as a continuing unit over time.
3 And I think that's, you know, going to be helpful for
4 us to understand how they did this.

5 What the response said is: Everything is
6 fluid. It might have been fluid in the past; it
7 could be, in theory, fluid today, but what happened
8 in the past should be fixed indefinite. And that
9 should be not a huge pull for the United States to
10 pull together and say, Okay, from 2001 to 2008, here
11 was the structure; from 2008 to 2011, it operated
12 like this, or 2011 to present, here's how it
13 operated. But we don't have any kind of sense of
14 that, Your Honor. And I think, in fundamental
15 fairness to the defendants, we have to get a better
16 idea of what they're alleging happened. Because,
17 again, it's not for the defendants to guess about
18 what their theory is. They have to clearly
19 articulate it, so we can provide an adequate and
20 effective defense.

21 And I don't think this is too far afield
22 from what this Court ordered in the Aispuro case.
23 And just to remind Your Honor -- and this was a drug
24 conspiracy case, but if I look at the F.Supp.
25 opinion, you said that, "The general allegation that

1 all of the defendants engaged in a conspiracy does
2 not sufficiently apprise each defendant of the United
3 States' theory as to how each was involved in the
4 alleged conspiracy." This is really what I'm driving
5 at. Like, how was my client involved in this alleged
6 enterprise? Where did he fit into the structure?
7 How did he participate in it? And we don't -- I
8 mean, it's really easy, and we have a lot of
9 confidential human sources that will glibly say, Oh,
10 my gosh, he was the shot-caller. But we don't know
11 how that happened or when that happened, or you know,
12 who -- depending on how they want to phrase the
13 structure of the enterprise.

14 I mean, that's sort of contrary to this
15 idea laid out in the indictment that the SNM was
16 controlled by a table or mesa, that, to me, that
17 seems like it would have to be a group decision. It
18 doesn't seem like a single person can say, I want so
19 and so hit. It seems like it's by committee. And
20 what I'm hearing throughout the course of the
21 hearings is it's not a committee; it is committee; it
22 may be committee; depends on the year; depends on the
23 era. And I think we need a more fixed and definite
24 idea of that, Your Honor.

25 And I don't know if you have any questions

1 with regard to the bill of particulars, but I think
2 that's it in a nutshell.

3 THE COURT: All right. Thank you, Mr.
4 Lowry.

5 MR. LOWRY: Well, there are two other
6 parts. I don't know if you want to take them one at
7 a time. I'm happy to do that, Your Honor.

8 THE COURT: No. Go ahead.

9 MR. LOWRY: Well, the same issues arise, in
10 my view, with the Molina murder and the Romero count.
11 What we have in the Javier Molina murder, and you
12 heard some of this in the motion to compel is --
13 well, the Government's theory again has shifted. And
14 when we were arguing the confidential informant
15 motions, we heard for the first time that this really
16 wasn't a hit based on paperwork that came down from
17 Santa Fe; that this was a long, outstanding hit. And
18 that was news to us. And then we started getting
19 additional information about the timeliness of when
20 this happened.

21 And I think, again, to be -- have some
22 rational understanding about what theory they want to
23 go to trial on is instrumental in providing an
24 effective defense. And part of the problem here is
25 Mr. Baca was sequestered at Level 6 during this time.

1 And there are all kinds of functional
2 questions that have yet to be even touched upon in
3 discovery. One notion that's floated in the
4 discovery is that Mr. Baca had paperwork, and
5 delivered paperwork from his cell at Level 6, all the
6 way down to Southern in Las Cruces. And that's one
7 reason we were interested in the location matrix of
8 who was where when. And I understand the Court's
9 ruling it's like, Well, you tell the Government who
10 you think carried the material down there.

11 But if I look at the cases in a bill of
12 particulars context, Your Honor, I really
13 respectfully think that's the Government's burden.
14 And we cite the cases at page 3 of our reply; that
15 it's really on the Government to enlighten us about
16 what their theory of what happened is. And again,
17 this is the JM Huber case I cited yesterday: "It
18 must never be forgotten that what is sought by a bill
19 of particulars is not what actually happened but what
20 the opponent claims happened."

21 I mean, what we think may have happened --
22 I mean, we can hypothesize all day long. But we need
23 a fixed and clear vision of what the Government
24 thinks happened. And that's why we need to be
25 prepared, if we're -- at this point to have the

1 entire matrix. So if we get up during trial, and
2 none of our ideas of who that might be ring true, we
3 don't want to be surprised at trial. I mean, what I
4 suspect could, in theory, happen is our ideas of who
5 may have done this, who may have been potentially
6 available to carry documents, they'll easily
7 construct a way around that, and it might be somebody
8 else.

9 What would be helpful, and what I think a
10 bill of particulars demands is they put us on notice
11 what their theory is and how that happened. We don't
12 even have any idea whatsoever, despite all of these
13 colorful allegations, of how in the world Mr. Baca
14 would have any paperwork in his cell related to
15 Javier Molina at all. And I have not come across
16 anything in the discovery that has enlightened me one
17 bit about how that happened. I mean, that would be
18 helpful to know so we could structure a defense
19 against that.

20 So I just go back to this Court's ruling in
21 Aispuro, which would be really helpful to know, is
22 what the Court ordered there at the end will require
23 the United States to provide overt acts for which it
24 believes each defendant is responsible. That's what
25 we're really looking for in the Molina and the Romero

1 cases, Your Honor.

2 Again, the same deficit is apparent in the
3 Romero alleged assault. There is no "there there"
4 with regard to Mr. Baca's role in that assault.
5 There is a bald allegation in the indictment. But we
6 haven't seen anything in the discovery that ties Mr.
7 Baca to this alleged conspiracy.

8 And what we'd ask this Court to do is what
9 the Court did in Aispuro, is to tell us in clear
10 fashion what they think happened so we can provide an
11 effective defense.

12 Unless the Court has any questions, I'll
13 yield my time to the United States.

14 THE COURT: Thank you, Mr. Lowry.

15 If anyone else wants to speak on Mr. Baca's
16 motion?

17 All right. Mr. Castellano.

18 Did you have something else, Mr. Lowry?

19 MR. LOWRY: Just briefly. I don't want to
20 hold up the United States, but Your Honor, I know
21 that three other defendants joined this motion. And
22 I would just say, in terms of the Molina murder,
23 there seems to be various theories about who carried
24 the paperwork allegedly. And for Mauricio Varela's
25 behalf, I'll just say that one of the Government's

1 theories could be that he had nothing do with it.
2 And it just a bit boggles my mind, and what I
3 anticipate is some of the confidential human sources
4 say that Mr. Varela had nothing do with that. So I
5 think it would be helpful for this Court and for the
6 defendants to understand what their theory is, so we
7 could clearly define who the proper defendants would
8 be in this case, Your Honor.

9 THE COURT: All right. Thank you, Mr.
10 Lowry.

11 Any other defendants wish to speak on Mr.
12 Baca's motion?

13 All right. Mr. Castellano.

14 MR. CASTELLANO: Thank you, Your Honor.

15 I want to say there is probably just over
16 20,000 pages of discovery now. And if this is the
17 best example of the problems the defense thinks we
18 have with our case, I think we're in pretty good
19 shape. And I'm going to show you that from the
20 documents that the defense provided as attachments.

21 So the first thing I want to note here is
22 that -- this is from Document 1056-3. This is a
23 defense filing. It's DeLeon Bates stamp 15420.

24 And something I mentioned yesterday and
25 that's that "Once incarcerated within the New Mexico

1 Department of Corrections, most 18th Street Gang
2 members align themselves with the SNM." That's one
3 of the examples I used yesterday from Santos Gonzalez
4 when we talked about -- said there is actually an
5 example from one SNM member indicating that 18th
6 Street members align themselves with SNM. So that's
7 one example from the discovery of how that happens.

8 Two other people are Sammy Silva and Fred
9 Quintana. Those are 18th Street members, who are
10 also SNM Gang members. So I give the Court some
11 examples, even from the defense's exhibits how street
12 gang members align themselves with the SNM.

13 Now, looking at the documents here. This
14 is also Document 1056-1. Something important to note
15 here, the claim is that the SNM, or the FBI
16 recognized the four different SNM gangs. But that's
17 actually not the case. So looking here -- this is
18 actually not an FBI special agent, it's a staff
19 operations specialist, who generated a chart. And
20 that was on December 10th of 2008.

21 If you look at the next document, which is
22 the report by the gang expert, that happened on
23 October 1, 2008. So, in essence, what happened was
24 somebody from the FBI interviewed Robert Martinez.
25 Robert Martinez told them about factions within the

1 SNM, and a report was generated by the FBI. So it's
2 not the FBI recognizing that there are, in essence,
3 four gangs. It's just a report reflecting what
4 Robert Martinez said in his report.

5 So let me turn to his report now. If this
6 person in this report were a witness at trial, we
7 could, in essence, make almost all of our elements
8 from this one person alone. There is an indication
9 in '83 or '84 that Juan Baca established the rules of
10 membership in the organization. So, as Mr. Lowry
11 stated, they have to do things separate and apart
12 from the acts they commit, the racketeering acts.
13 One of those is establishing rules for the
14 organization. So, in this case, the gang was
15 established, and there were rules also established.

16 People needed to be sponsored by a member
17 in good-standing. That's also a rule by the gang.
18 And then the membership sometimes had background
19 checks conducted to make sure they didn't have
20 charges that were not approved by the SNM. Prospects
21 had to be voted in by three individuals. And that
22 happens even to this date. There are means of
23 communication known as kites. And communication
24 happens through visitors, and sometimes through
25 corrections officers.

1 On 1056-2, page 2, it talks about how
2 members communicate through codes, also with the use
3 of friends and family members. And once a vote is
4 taken, Baca -- this Baca mentioned in the report --
5 will provide the prospect with a knife and send them
6 on a mission. So, basically, people had to earn
7 their bones or make their way into the organization.

8 At that time, there was a rule that the hit
9 be witnessed by another member of the SNM. So once
10 again, there is a rule.

11 And at that time there was a membership of
12 30 to 35 members.

13 The other important thing here is that at
14 that point in time, it wasn't that there are two
15 different gangs. It's just that there is a claim by
16 this one particular person that young members were
17 disrespectful to the older members of the
18 organization. Once again, this is discussing only
19 one organization.

20 The next is that when Baca was away, he
21 passed the keys to SNM member Angel Munoz. So what
22 we have here is a delegation of authority to another
23 person. And that still happens to this day. They're
24 called llaveros, or keyholders. So persons at a
25 particular prison is given authority over that pod or

1 that prison to make decisions.

2 So these are all things separate and
3 distinct from any acts they commit. It happens to
4 show the organization and how they're established.

5 When Munoz took over, he also kept to the
6 same code of conduct established by Baca.

7 And it talks about heroin addiction, which
8 presented a problem in the organization. So like all
9 organizations they do have problems that interrupt
10 the flow of their work.

11 The organization started falling apart
12 because some of the young inmates were given
13 authority to run the SNM throughout New Mexico. Once
14 again, it's still the same organization. And part of
15 the problem was that people were randomly ordering
16 hits without going through the proper channels. So
17 that tells us that there were rules for ordering hits
18 on people, and sometimes people could fall out of
19 favor when they didn't follow those rules.

20 Another indication here is racketeering
21 activity. This person reports that drug operations
22 were part of the SNM's business. But at that time,
23 Angel Munoz historically was a primary leader of the
24 SNM during that period. So at that point, there was
25 a leader of the organization, and people who fell

1 under him.

2 There is also an indication of a Dan-Dan,
3 another Daniel Sanchez, who was a right-hand man
4 during the late '80s and early '90s, but he
5 eventually lost his status within the organization.
6 So you had people who were leaders and people who
7 were their right hand, who helped them run the
8 organization.

9 Okay. At this point, they still have
10 rules. The young members are trying to maintain a
11 low status because they knew the level of loyalty
12 within the SNM was low, and they were trying to
13 improve that. So once again, it's only one gang
14 we're talking about that has its own problems, like
15 any organization.

16 Eventually, when Munoz went back to prison,
17 he was once again recognized as the leader of the
18 SNM. And at that point there were two known
19 shot-callers under Munoz.

20 There is an indication that during the late
21 '90s, Ray Baca, or "Pup," was also an influential SNM
22 member, but was not accessible because he was often
23 out of the state. So when he was in the state, he
24 wielded more power. And when he was out of the
25 state, other people would have to make decisions.

1 That might be a time you'd have the mesa, or the
2 table, who would make decisions.

3 Okay. Now, the important thing here that
4 defense focused on, other than everything else that's
5 listed here, is that this expert, in 2008, indicates
6 there were different factions within the SNM. It
7 doesn't say there are four gangs. It says that there
8 is one gang with different factions. So the example
9 used in the pleadings was Congress. And Congress is
10 one body. People are members of Congress; they have
11 different committees of Congress. You have
12 Republicans, Democrats, Independents, and others, but
13 they're still members of Congress. The same thing
14 applies here with the SNM. So here, once again, I
15 said even the expert in the best example they can use
16 from all the discovery is that there are factions
17 within the organization. And at the end of this,
18 you'll see that the person concludes that the SNM is
19 a statewide gang, singular.

20 Something else here is the SNM adopted
21 ligature strangulation as its method of choice for
22 murders. And this has been a traditional means of
23 doing so. So the 2001 murders alone, executed on the
24 same day, were ligature strangulation murders. So it
25 was a signature murder at the time, and one of the

1 ways they executed people.

2 And here's what I talked about earlier.
3 Even this expert indicates the SNM is a statewide
4 prison gang. So it's a gang that operates throughout
5 the state. It's one gang and not multiple gangs. So
6 that was a 2008 report.

7 The next report -- Document 1056-3, which
8 is a defense exhibit -- is a 2009 meeting. And once
9 again, even though 2008 says the gang is in disarray,
10 even in 2009, it's alive and well. And someone is
11 talking about this particular person's experience
12 with the gang.

13 So once again, the SNM is a New
14 Mexico-based prison gang. And it references a number
15 of names here. In the next paragraph it indicates
16 each of these became members of the SNM.

17 Going back to structure and leadership,
18 this is on Bates stamp 15409, "Eventually" -- the
19 name is redacted -- "met Juan Baca, the original
20 founder of the SNM. Baca had just returned to the
21 NMDOC, and had been working to solidify the presence
22 of the SNM gang in the prison system." This tells
23 you there is a continuity of the gang, and there are
24 times when they're fighting to solidify their
25 presence and make sure their existence continues.

1 Here, there's another part indicating that
2 "Baca and Jacobo were still working to formally set
3 up the SNM. And they asked" -- the name is redacted
4 -- "to be one of the first to set up the blood-in
5 blood-out example. In order to do this, the person
6 had to either stab or kill someone from the rival
7 gang." So once again, there are rules for membership
8 and the rules for getting in and possibly out of the
9 gang.

10 Okay. "When outside the Department of
11 Corrections, the SNM still aligns itself with the MM,
12 which I think is the Mexican Mafia. Although the SNM
13 is outnumbered in some prison facilities in other
14 parts of the country, the organization has a
15 reputation of being a powerful gang."

16 Let's talk about the next page, 15411.
17 "The founding members include Baca, Armijo, Kendrick
18 Duran" -- some other redacted names -- "Julian Romero
19 and Billy Garcia." As the Court knows, Billy Garcia
20 is charged in this case, and Julian Romero is a
21 victim in this case. And once again, "these senior
22 members would have to vouch for potential members."
23 So the same thing is happening -- a separate person
24 indicating what the rules are of the organization,
25 how to get in, and it requires other people to raise

1 their hand for you.

2 "Baca told another person to recruit
3 members to grow the organization." So once again,
4 we're talking about recruitments, and one
5 organization.

6 "There are known SNM members throughout the
7 U.S. Bureau of Prisons system." So once again, once
8 the SNM become members of the federal system in the
9 Bureau of Prisons, they latch on to other members if
10 they can.

11 Here is an indication that when this person
12 left the federal system, he tried forming a different
13 group, with the idea being that they utilized the
14 organization as a cover for holding its own
15 organizational meetings in the prison system. So
16 there is a indication of a cover, so that they
17 continue meeting as a group.

18 On Bates stamp 15414 of DeLeon, it says
19 here, "There is an agreement between the SNM and the
20 LC" -- which is Los Carnales -- "that outlines a
21 mutual respect between the organizations, despite
22 their different affiliations." So that's another
23 example of one organization having an agreement with
24 another organization. It's not different
25 organizations called the SNM having an agreement with

1 the LC.

2 The SNM always maintained a hit list, which
3 had names of individuals who were known to
4 misrepresent themselves by calling themselves SNM
5 members or associates. So here is an example of
6 somebody -- if somebody claims to be an SNM member,
7 and isn't a member, there are consequences for that,
8 or even if they claim to be an associate. So
9 claiming to be a member could result in death. So
10 there is definitely a difference between members and
11 nonmembers.

12 At the bottom, there is an indication
13 that -- the names are redacted --

14 THE COURT: What would be the benefit of
15 somebody wanting or identifying themselves as an SNM
16 member, but not being an SNM member? Why would
17 anybody do that?

18 MR. CASTELLANO: It may be so they have the
19 protection of the SNM, or at least someone believing
20 they're a member will know that someone won't move
21 against them because they think they are a member.
22 And if you move against a member and you don't have
23 the right to do so, there could be retaliation. So
24 that's an easy example, at least, of why you might
25 claim that. Especially, if you don't belong to

1 someone in prison, you don't have anyone to protect
2 you necessarily, so this would be a means of doing
3 so.

4 "These are the people, along with Ray Baca
5 a/k/a "Pup," are running the SNM in the Southern New
6 Mexico Correctional Facility. Both have been members
7 since the early '80s, and were brought into the SNM
8 by another person and Kendrick Duran." Here is a
9 notification, in 2009, that "Pup" is running the SNM
10 at the Southern New Mexico Correctional Facility. So
11 there is a question about leadership and where and
12 when.

13 On the next page, 15416, "Currently the SNM
14 is attempting to organize itself on the outside of
15 prison. In Las Cruces approximately five or six
16 members are recruiting and organizing on the streets.
17 Members are also trying to recruit and organize in
18 Albuquerque. As long as the SNM considers itself
19 organized on the outside of the prison, individuals
20 are expected to send money to members in the prison."
21 So this is another means of supporting members in
22 prison. People are supposed to send money in prison
23 so people can have commissary and other privileges.

24 THE COURT: This note, though -- if this is
25 a 2008 document -- or 2009 -- I guess I'm surprised

1 that it's like in the present tense, like the SNM is
2 not organized outside of the prison. I would have
3 thought from the allegations that it was organized
4 outside of the prison before that date.

5 MR. CASTELLANO: Oh, before that date?
6 Well, the prison system is a rotating door, so you
7 have members who are in prison and who are released
8 from prison. So, obviously, once you're out of
9 prison, you may still be S, or you may go back to
10 your street gang. But once you go back into prison,
11 you belong to the S, and you support the gang.

12 In terms of rules, once again, at the
13 bottom of the page, "Before being released from
14 prison, members get instructions from their
15 leadership regarding drug sales, hits, and are often
16 provided with phone numbers to put them in contact
17 with other members on the outside who can help them
18 start making money." So once again, there are rules
19 and there are instructions and a means of continuing
20 the organization and hitting those who fall out of
21 grace with the organization.

22 Okay. 15417 is the Bates stamp number for
23 this page. It indicates -- this is even as far as
24 back at 2009 -- "Ray Baca, a/k/a "Pup," was sent to a
25 Nevada prison in approximately 1996 or 1997, because

1 he was creating a great deal of disruption within the
2 system. Because of his strong influences within the
3 SNM, he had control over much of the violence
4 occurring in the prison." And this is the last time
5 this person spoke to Mr. Baca directly. "Mr. Baca
6 always has a strong influence on new recruits joining
7 the SNM."

8 There is another rule, separate and apart
9 from the acts they commit: "Before a person is hit,
10 he is supposed to be given the opportunity to explain
11 his side of the story. This is written in the SNM
12 bylaws."

13 THE COURT: Have you ever seen a written
14 set of bylaws?

15 MR. CASTELLANO: I have not, Your Honor.

16 Here, a "person named Juan Mendez is
17 currently not in good standing with the SNM, and is
18 trying to reestablish himself within the
19 organization. When members like Mendez come back
20 into the fold, they're expected to do something to
21 prove themselves." There is an indication here that
22 at that time the rules of the SNM at Southern were
23 stricter than they were previously. So, like I said,
24 there are people who have control or shot-calling
25 ability at each facility. And at that time Southern

1 had a tougher set of rules.

2 The other thing I want to indicate about
3 the All Stars is that I don't think there is any
4 person in this room that's a member of the All Stars.
5 The All Stars was an attempt to start a group, and as
6 far as I know, they are extinct. I don't think
7 anyone in this room represents the All Stars.

8 THE COURT: What happened to them?

9 MR. CASTELLANO: The SNM attacked them.
10 When they tried to separate and form their own group,
11 that didn't work out too well for them. In the
12 16-1613 case there is a -- in some of the overt acts
13 there is an indication of an assault on, I think, LT;
14 might be Leroy Torres. And he was assaulted for his
15 attempts to try to break away and form a group. And
16 like I said, that didn't go well for him.

17 THE COURT: What happened to them? Did
18 they become ex SNM members? Did they get kicked out?
19 Get killed? What happened to them?

20 MR. CASTELLANO: I think all of the above,
21 Your Honor, depending on what they were trying to do,
22 and how disrespectful they were to the organization
23 as they tried to do so.

24 THE COURT: So the All Stars, every one of
25 them are no longer SNM Gang members according to the

1 Government?

2 MR. CASTELLANO: I don't believe that they
3 are. I'm not aware of any -- and I can check with
4 the case agent -- but like I said, as they started to
5 try to form a different group, the All Stars fell out
6 of the favor. And that is indicated in some of the
7 overt acts in 16-1613. There was a person who was
8 assaulted as a result of his attempts to form the All
9 Stars.

10 So looking at even the defense's exhibits,
11 one person alone, even out of one or two documents
12 here, could establish the enterprise, its existence,
13 the fact that it's ongoing, the fact that it engages
14 in racketeering activity, the fact that it engages in
15 interstate commerce. So the only thing left would
16 be -- we would have to prove -- is that each
17 individual committed the crime charged, the
18 underlying crime of violence, and that they did so to
19 maintain or increase their position in the
20 enterprise, or to gain admission into the enterprise.
21 And even these reports indicate how someone gains
22 admission. And that would be normally committing an
23 act of violence, and three people vouch for you to
24 gain entry into the enterprise. So all the evidence
25 they need is here in the documents they presented.

1 And as I stated, we have over 20,000 pages of
2 hardcover discovery.

3 So, as I say, based on this, Your Honor, I
4 would ask the Court to deny the motion for bill of
5 particulars, especially in light of the fact that we
6 have an indictment that covers the elements of the
7 offense. The report by the expert was 2008. Our
8 agents have been talking to people more recently than
9 that. The indictment is formed from the discussions,
10 from the discovery, the historical discovery, and
11 discussions with current leaders and members who have
12 given statements to the agents. So that information
13 is accurate in the indictment. It's based on the
14 overall investigation, as well as -- including the
15 investigation, discussion with gang members. We've
16 had a lot of time to meet with members since the 2008
17 report was authored by Robert Martinez. But as I
18 stated, even that report falls in our favor.

19 I don't have anything else, unless you have
20 questions.

21 THE COURT: Is there anything you want to
22 say on these questions that Mr. Lowry has listed in
23 his reply brief?

24 MR. CASTELLANO: Let me take a look, Your
25 Honor.

1 I answered question 3 from their documents.
2 I answered question 4 from their documents. I
3 answered, basically, question 5 from their documents.
4 And the question then is: "Who are the individuals
5 responsible for putting or authorizing each act in
6 this case?" That's not necessarily a requirement
7 for -- I think some of that was in the discovery, and
8 some of it will be revealed in Jencks. But there is
9 no requirement that we show who authorized it. We
10 have to show that they either they committed the act
11 or aided and abetted in the act that's charged in the
12 indictment. And I answered question number 1 as well
13 from their own documents attached, and I think
14 question 2 as well.

15 THE COURT: All right.

16 MR. CASTELLANO: As I stated, these are
17 their documents. I'm assuming it's the best example
18 they could find from 20,000-plus pages of discovery,
19 which means there is more out there, and probably
20 better and stronger evidence from the other
21 documents.

22 THE COURT: All right. Anything further,
23 Mr. Castellano?

24 MR. CASTELLANO: No, Your Honor.

25 THE COURT: Thank you, Mr. Castellano.

1 Before Mr. Lowry speaks, any other
2 defendant want to speak on this motion for bill of
3 particulars? All right. Mr. Lowry.

4 MR. LOWRY: Thank you, Your Honor.

5 I would like to thank my colleague for
6 getting up and sort of underscoring some of the
7 problems we faced during the investigation and
8 document review. The United States just took the
9 record here and stated that there are certain rules,
10 and went over a document saying that all of these
11 were the rules of the SNM. And this is exactly why a
12 bill of particulars is warranted. Because, if the
13 United States is saying, as they just told Your
14 Honor, that this was a blood-in blood-out gang, and
15 that that was a rule of the SNM, well, that would
16 tell me that anybody that didn't blood-in was not an
17 SNM member. And, Your Honor, I think they would have
18 a great deal of problem. Because I think a number of
19 the confidential human sources that they will offer
20 to this Court as SNM members never blood-in to this
21 gang. So if that's a rule --

22 THE COURT: Yeah, but you just told me in
23 your argument you don't need to know the evidence,
24 you want to know what their charges are. You just
25 got a disclosure of what their theory is. And now

1 you're coming back and saying, Well, where is the
2 evidence.

3 MR. LOWRY: No --

4 THE COURT: That's the problem I'm having
5 with your argument, and I indicated this yesterday:
6 You want to know what their theory is. You've heard
7 their theory, it's fairly detailed. Then you come
8 back and say, Well, they're going to have problems
9 with it. Well, that's not a bill of particulars.

10 MR. LOWRY: Okay. But, no, Your Honor, I
11 apologize. That is --

12 THE COURT: That is what you just said.

13 MR. LOWRY: Well, I'm saying --

14 THE COURT: That's inconsistent with what
15 you said yesterday and earlier today.

16 MR. LOWRY: Well, I beg to differ, Your
17 Honor. What I'm saying is that this is exactly what
18 I wanted to know, what their -- what I'm saying is I
19 would really like the United States to think about
20 this, because I think this was a rather hasty
21 response.

22 THE COURT: But, Mr. Lowry, with all due
23 respect, that's not what the bill of particulars is
24 for, to make the Government think.

25 MR. LOWRY: Okay. It's to put us on notice

1 of how this enterprise existed. And if they're going
2 to say that -- take the example, if you will, they
3 said that these different factions are like different
4 memberships of Congress, and I want to take that
5 analogy head-on. Well, Congress has to vote on
6 something in order to ratify a decision. And that's
7 what I'm looking for here, Your Honor, is if they're
8 saying that these factions of the SNM was like
9 Congress, what I'm looking for is, well, how did they
10 make a collective decision? Because what I'm
11 struggling with in this case is how to distinguish
12 decisions that were made by individuals, non-SNM
13 people, that are being attributed to this alleged
14 enterprise of the SNM. And having an idea of how the
15 Government thinks this enterprise was structured
16 would be instrumental to the defense to articulate a
17 difference between allegedly valid SNM activity and
18 otherwise non-SNM activity.

19 That's really where I'm going with this,
20 Your Honor. It's not to delve into specific -- the
21 detail of this, but I was using that as a point to
22 say, if they're saying that these are the rules, then
23 let's talk about that. Because they just got up and
24 said Southern had different rules. And this is the
25 point I'm trying to make: If there are different

1 rules in different places, then we're talking about
2 different organizations, different subgroups. We're
3 not talking about an umbrella group. And I'm trying
4 to figure out what is the structure of the umbrella
5 group. And this is a constant battle. And I think
6 the United States just highlighted that, that
7 Southern has different rules. Well, that to me, is
8 talking about a different organization. It's not
9 talking about the SNM.

10 I just heard that the All Stars completely
11 broke away from the SNM. That's interesting to me,
12 as we pointed out in a footnote in our brief. On the
13 All Stars, your Honor asked the United States what
14 happened to the All Stars. Well, they all became
15 government informants. I mean, Mr. Archuleta,
16 Leonard Lujan and others. So that's what happened to
17 the All Stars. Not only did they break away and
18 apparently drop out of the SNM, they became
19 informants.

20 So I'm just -- this is the problem I'm
21 having: Different rules, different places. I would
22 like to know how the overarching organization was
23 structured. And if we want to say that one 302 laid
24 out all the rules, that would give me a template.
25 But there are plenty other 302s from different

1 confidential human sources that have different ideas
2 about players, who was the leader. We saw in that,
3 you know, that particular CHS thought Mr. Baca had
4 influence. And there are other people that would
5 say, Well, I think Mr. Archuleta had the influence.
6 And there are other people that talk about the
7 differences between Mr. Archuleta and Mr. Baca, and
8 who followed who, and for what reasons.

9 So what I'm looking for is clarity here,
10 Your Honor, so we can structure a defense. For
11 instance -- and I'm not trying to get down in the
12 weeds here -- but the United States said that there
13 is a rule of the SNM that before somebody was hit,
14 that they would get to explain their side of the
15 story. Well, if that's the rule, and an individual
16 never got to explain their side of the story, that
17 tells me that that was not an SNM hit.

18 And so this is -- I'm a little befuddled,
19 frankly, that there is this hodgepodge of statements
20 by all kinds of people. And, Your Honor, not
21 surprisingly, many of these confidential human
22 sources are contradictory. And trying to discern
23 what the, quote, "rules" for the SNM are, based on
24 any one report, is fraught with peril.

25 So, again, what we're looking for is not --

1 what we're looking for is to understand how this
2 enterprise is structured in a way that it made
3 collective decisions. And it's like any type of
4 agency. If they're going to claim that any
5 individual was acting as an agent of the umbrella
6 organization, we need to know how that agent was
7 empowered with that authority to act on behalf of the
8 whole. And that's what we're driving after here in a
9 bill of particulars. And I still don't have it.

10 I mean, there was a great mishmash of
11 references to tablas, and this person was the leader.
12 But I didn't get any sense of how a collective
13 decision was made. And that's what I'm looking for,
14 Your Honor.

15 If you have any questions --

16 THE COURT: I do not. Thank you, Mr.
17 Lowry.

18 Well, I'm going to deny the motion for a
19 bill of particulars. I think the charges against Mr.
20 Baca and the other defendants who joined the motion
21 are sufficiently clear. One of the things the case
22 law teaches you is that even if you might have
23 concern about the particularity of an indictment, the
24 discovery can cure any -- cure some of the problems
25 with a lack of specificity. I know we had a special

1 date or something for filing this motion, and pushed
2 it to April. But, generally, these are brought early
3 in a case, when defendants are grappling with an
4 indictment that may have been drafted rather rapidly,
5 and not as full and robust as the indictment,
6 superseding indictments that we have here. And it's
7 been supplemented with a large amount of discovery.

8 I think, largely what Mr. Baca is pointing
9 to are problems with the Government's case. And I
10 think those are more appropriately resolved at trial
11 and arguments, rather than continuing to try to hit
12 the Government with more specificity as to what their
13 theory is going to be. It seems to me it's pretty
14 well set. So I don't think that we need to
15 supplement it with a bill of particulars. So I'll
16 deny that request.

17 All right. Then the final motion that I
18 think we have for today is the one I talked about a
19 little bit earlier, is that -- is the one that Mr.
20 Gallegos filed, Andrew Gallegos, and then Joe
21 Gallegos joined it as well. So Mr. Roberts, Mr.
22 Benjamin, one of you going to argue this motion?
23 Looks like Mr. Roberts.

24 MR. ROBERTS: Thank you, Judge.

25 THE COURT: And I guess you joined this as

1 well, Ms. Arellanes, for Shauna Gutierrez?

2 MS. ARELLANES: I did, Your Honor.

3 THE COURT: Okay. All right. Sorry I
4 didn't mention that.

5 Let me, Mr. Roberts, indicate that Mr.
6 Creecy just appeared for -- at 9:10. Mr. Creecy, are
7 you back there?

8 MR. WINDER: He did, but he left.

9 THE COURT: All right. So he appeared and
10 went.

11 And Mr. Blackburn, you just appeared as
12 well for Mr. Garcia. Good morning to you.

13 MR. BLACKBURN: Good morning, Your Honor.

14 THE COURT: All right. Mr. Roberts.

15 MR. ROBERTS: Thank you, Judge.

16 THE COURT: Mr. Roberts.

17 MR. ROBERTS: Judge, I won't take up, I
18 don't think, too much of your time. These issues
19 have been sort of litigated. The Court has already
20 made -- looks like -- a decision on this, or at least
21 proposed a decision. But to the extent that the
22 Court will remain fluid, as it's indicated on these
23 issues, we would like to say a few things on behalf
24 of Mr. Andrew Gallegos specifically, and just a few
25 things we'd like to point out.

1 First of all, this motion to sever is not
2 too unsimilar to that filed by Mr. Santos (sic), by
3 Erlinda Johnson, in that there are some similarities,
4 in that my client, and I believe also Mr. Joe
5 Gallegos, denies being a member of the SNM group. My
6 guy specifically, Andrew, has no affiliation that I'm
7 aware of, or that I see in the discovery, in the
8 20,000-plus pages of discovery, that indicates that
9 he's a member of the SNM.

10 There is also similarity in that the crimes
11 occurred outside of prison. This was not a prison --
12 Counts 4 and 5 are very specific to Adrian Burns --
13 was not done in prison, so it was not a prison crime.

14 There is wide disparity, as Ms. Johnson
15 pointed out, in terms of the time, the location of
16 these crimes, and that they were not connected or
17 similar in any way.

18 And there is also questions that she
19 pointed out in terms of the enterprise, who ordered
20 the hit, how the papers came down, the hits came
21 down, or how the enterprise worked. Those are all
22 similarities. And I'm not going to belabor that.

23 What I'd like to talk about is the
24 disparity of evidence against my client, as
25 against -- as opposed to the other individuals in

1 this case collectively. There is very little
2 evidence as to my client, Andrew Gallegos',
3 involvement in this enterprise or in this crime.

4 As the Court's aware, this was first
5 indicted against him back in 2012 by the state. It
6 was a state case. And shortly after its indictment,
7 it was dismissed, nolle pros'd for lack of evidence.
8 So they determined at that time that there was not
9 enough evidence to go against my client or against
10 Joe Gallegos. I think that nolle pros came down in
11 November of 2012.

12 And the state picked it up four-plus years
13 later. And the only difference was this issue of
14 VICAR that they brought into it, that made it not a
15 state case but a federal case. As far as I'm aware,
16 there is no real new evidence from what the state had
17 to what the Government now has four or five years
18 later, except I heard yesterday that there were a
19 couple -- or maybe it was the day before yesterday --
20 a couple of corroborating or cooperating witnesses
21 that will give some information as to the beef
22 between Joe Gallegos and Adrian Burns. That's sort
23 of the first time that was really confirmed to me.
24 I'm not sure exactly what these witnesses are going
25 to testify, but I suspect it's something to indicate

1 that Joe had a beef with Andrew.

2 THE COURT: Now, are these -- did you
3 understand these to be witnesses that the defendants
4 are going to present or the Government is going to
5 present?

6 MR. ROBERTS: The Government stated that
7 they had these witnesses; that they had them after
8 they indicted him. Remember, they stated that the
9 Grand Jury --

10 THE COURT: I remember the beef. But I
11 didn't -- I thought it was more a defense theory than
12 it was a Government's theory. But maybe I
13 misunderstood it.

14 MR. ROBERTS: The Government stated, I
15 believe, in Mr. Benjamin's motion to release the
16 Grand Jury statements, they stated they didn't put on
17 any specific evidence on VICAR. But after the Grand
18 Jury was -- the indictment came down, they had other
19 witnesses -- two -- I believe a couple was stated --
20 other witnesses that would testify regarding the
21 conflict between the Gallegos brothers and Mr. Burns.
22 That statement was made at that time.

23 And that was fairly new to me. Like I
24 said, I'm not sure exactly what these witnesses are
25 going to say. I suspect it's mostly -- may refer

1 mostly to Andrew. It's probably hearsay, for all I
2 know. I'm not sure.

3 But what I do know in terms of what they
4 have or don't have in terms of Count 4 and 5, they
5 don't have any DNA evidence. They don't have any
6 fingerprint evidence. There is no confession. There
7 is no statement regarding this that I'm aware of.
8 There was, supposedly, a wire that was withdrawn, so
9 there is no wire. There is no tape-recording that
10 I'm aware of. There is no video evidence.

11 The body of Mr. Burns was found sometime
12 after he was killed at a different location. So I'm
13 not sure if we have evidence as to when exactly he
14 was killed. He was apparently shot in a different
15 location, and brought to a remote location in the
16 bosque, and burned, from the evidence. But we don't
17 know exactly when that happened, when that occurred.

18 The gang connection, in terms of what the
19 Government has proposed, is somewhat tenuous. This
20 feeder gang concept that they've put forward, it's
21 not clear, even -- again, how, or who ordered this
22 murder, where it came from, how it came down.

23 There is issues on the VICAR regarding how
24 that all operates, as you've heard some arguments on
25 that today and yesterday with the bill of

1 particulars, and Mr. Benjamin's motion yesterday.

2 So five years after this apparently
3 happened, there is very little evidence that I see in
4 the discovery that links Andrew Gallegos to anything.
5 I don't have anything. I don't see it. He's only in
6 this case, it appears to me, because he's Joe
7 Gallegos' brother. That's it. If he was not Mr.
8 Gallegos' brother, he wouldn't be here, I wouldn't be
9 here. That's the only way -- Joe Gallegos,
10 unfortunately, is charged in six counts. My client
11 is charged in one count, one count alone. Now, when
12 I say "one count," I meant one murder. There are two
13 counts, obviously, 4 and 5, but one incident and one
14 murder, alleged murder.

15 Now, that's what they have on Andrew.
16 That's pretty much it. But in terms of what they
17 have on all the other defendants, I'd like the Court
18 to consider that they have much more, and that this
19 disparity of evidence is what prejudices my client,
20 puts him at a disadvantage. Because there is going
21 to be quite a bit of testimony, as you've heard
22 already, and seen, regarding the other defendants.
23 And I'm using that collectively, because there are a
24 lot of defendants, and there is a lot of testimony
25 that will be heard. There is over 20,000 pages,

1 you've heard, of testimony (sic), mostly dealing with
2 everyone else except my client. There will be
3 evidence of -- much stronger evidence of actual
4 events that took place. There's a videotape, gross
5 gruesome murder, stabbing video. There is
6 tape-recordings, wires of people making statements
7 or -- damning statements; secret statements that were
8 made as well. There will be a multitude of CIs,
9 known and unknown, against the other defendants.
10 There are some defendants that very clearly were
11 members of the SNM, who have a pedigree of sorts in
12 the organization, that will be presented aside from
13 my client's involvement. There will be possible DNA
14 evidence, I believe. Maybe even fingerprint
15 evidence. But all going towards these other 19 or so
16 defendants, none towards my client. But yet, my
17 client will have to be seated in the same courtroom
18 and in the same position.

19 And if the Court would imagine for a minute
20 a scale, and I just crudely am making a scale here,
21 Judge. Say that's the scale. And we have my client
22 on this side, and we put a few marbles on this side
23 for what the Government has. Basically, they say a
24 feeder organization, brother of Joe Gallegos, a few
25 other things perhaps; maybe four or five items

1 they're going to place on my side, on my client,
2 Andrew Gallegos. On the other side, they have all
3 this other evidence. They have, like I stated, a
4 video of a gruesome murder. They have audio
5 recordings, they have taped confessions and written
6 confessions. That scale starts to tip, and starts to
7 tip in that way. And if you imagine the marbles on
8 this side, the three or four on this side from Mr.
9 Gallegos, it starts to roll down; slowly, slowly roll
10 down to the other side. Sooner or later, the bucket
11 with all that 20,000 documents in evidence starts to
12 get filled up with my client's three or four items,
13 and they all become lumped in and they become one.
14 There is that spillover effect where they become one.
15 And once that happens, there is no corrective
16 instructions, or anything that's going to get him out
17 of that bucket. He's going to be part of that
18 conspiracy no matter what. And so he becomes highly
19 prejudiced by being lumped in with all these other
20 defendants.

21 And for those reasons, we're asking the
22 Court to consider to separate him. Like I said, in
23 the Zambrano case, the jury is predisposed to convict
24 the defendant, when they would not otherwise convict
25 him because of the disparity of the evidence. And I

1 propose to the Court that that disparity exists here,
2 and that my client will be prejudiced.

3 THE COURT: All right. Thank you,
4 Mr. Roberts.

5 Anyone else? Particularly anybody that
6 joined the motion? Anybody else want to speak on
7 this motion to sever?

8 All right. Mr. Castellano, is this going
9 to be a motion you take?

10 MR. CASTELLANO: Yes, Your Honor.

11 THE COURT: Mr. Castellano.

12 MR. CASTELLANO: Your Honor, as you may
13 have guessed, we oppose the motion to sever. We
14 think that this case is properly joined, and these
15 counts are properly joined with the rest of the
16 defendants.

17 I will note that Andrew Gallegos is not the
18 only defendant charged with only one count. There
19 are a number of other defendants charged with one
20 count who are properly joined. I believe Allen
21 Patterson and Christopher Chavez are only in Count 2.
22 And I'll ask someone to correct me if I get this
23 wrong. Mario Rodriguez is charged in one incident.
24 A number of people from Counts 6 and 7 are in those
25 two counts. So there are other examples even in

1 Counts 13 through 16, or at least 14, 15, and 16,
2 people are involved in basically multiple counts, but
3 one encounter.

4 So I think the Court has considered the way
5 this case is going to be divided up, it's not going
6 to be 19 people at trial now that the Court has
7 severed these trials. So it's going to be a smaller
8 trial. Mr. Gallegos will not be the only person who
9 was in one count or one incident. So I think that
10 joinder is proper under these circumstances.

11 As far as membership is concerned, Mr.
12 Andrew Gallegos is an East Side Loco member. That's
13 also a feeder gang into the SNM. We also believe
14 he's an SNM Gang member. We will have evidence at
15 trial indicating that he is, and that people who have
16 lived with him indicate that he is an SNM Gang
17 member. Also, their brother, Frankie G, also known
18 as "Cunte," is an SNM Gang member in the federal
19 system, in the Bureau of Prisons in Texas. So they
20 have three brothers who are members of the S.

21 In terms of this theory of evidence in this
22 case, I mean, it's a good argument, but it's --

23 THE COURT: Does the gang function -- I
24 mean, is it the Government's theory or allegation the
25 gang functions even when some of these people go to

1 federal prison?

2 MR. CASTELLANO: Yes, Your Honor. I think
3 though, in the federal system they fall under other
4 groups, but they still are identified as the SNM
5 under other groups. And they don't always
6 necessarily keep close ties with the state system,
7 even though they may.

8 THE COURT: Is that just because of the
9 difficulty of doing so in federal prison?

10 MR. CASTELLANO: I think the difficulty,
11 and then, like I said, they're not the biggest fish
12 in the pond in the federal system. So they may
13 belong to each other and be recognized as S, but they
14 will also fall under other larger gangs.

15 As I was saying, the disparity of evidence
16 is a double-edged sword because there is a lot of
17 evidence regarding other defendants. But it's not a
18 bad defense to say, Look at all this evidence
19 regarding these other guys, and they have almost
20 nothing on me except for this one incident. And that
21 actually can be used to someone's advantage. So when
22 we talk about the evidence and how much there is,
23 that's as good as it is bad, when you talk about
24 putting forth a defense before the jury. You could
25 sit there for days and not ask any questions

1 indicating -- and indicate to the jury that you
2 didn't ask questions because your guy wasn't
3 involved. I don't think that disparity of the
4 evidence is a winning argument here, because it's
5 just as advantageous the other way.

6 I'd also indicate that, as the case law
7 indicates, the jury instructions also are useful and
8 can cure any prejudice. The jury will be instructed
9 that each defendant should be considered on his or
10 her own, and the jury should consider the evidence
11 only as to that person. There is also a spillover
12 instruction, which tells the jury not to let that
13 happen.

14 And, Your Honor, I think for the most part
15 you have considered this. I don't want to stand here
16 longer and argue unless you have questions for me. I
17 think you made your decision. I think you thought
18 through it carefully, and you divided in case in the
19 proper way. And we would ask that it stay together
20 in that way.

21 THE COURT: All right. Thank you, Mr.
22 Castellano.

23 MR. CASTELLANO: Thank you, Your Honor.

24 THE COURT: Anyone else before I give
25 Mr. Roberts the last word on the motion to sever?

1 All right. Mr. Roberts, anything further?

2 MR. ROBERTS: Nothing further, Your Honor.

3 THE COURT: All right. Well, as I
4 indicated on Tuesday, when I spent a little bit of
5 time at the beginning, I thought long and hard about
6 it, and I was working even this morning putting
7 charts into the opinion that I have written, that's
8 getting a little bit longer. And, as I indicated, I
9 want to roll these motions in. At the present time,
10 I'm not inclined to sever it further. I think I've
11 broken it out in a way that is manageable, increases
12 the fairness to all the defendants. I tried to
13 reduce, to a minimum, any prejudice, and still try to
14 be efficient and get these things moving toward
15 trial. So I think I've done the best I can on
16 severance. I'll continue to look at it. I'll
17 continue to evaluate it as we barrel forward. But at
18 the present time, I'm inclined to keep it on the path
19 I've indicated on Tuesday. So I'm going to deny this
20 motion, but will continue to look at the shape of the
21 case as we get closer. But at the present time,
22 that's how I'm going to divide it up and get ready to
23 get these tried.

24 Well, I think I've come to the bottom of my
25 well. I think there were about 21 motions that we've

1 scheduled. I guess the first thing I'd like to ask,
2 since most of these were defendants' motions, does
3 anyone have a batting order that you'd like for me to
4 work on on any of the motions, either that we have
5 heard, that I didn't have opinions out to you before
6 the end? I think I've given pretty clear rulings the
7 last three days, so I don't think there is any
8 confusion. But if you want me to look at something
9 closer, if you want me to revisit something, or want
10 an opinion on it, I'd like to serve you as best I
11 can.

12 Why don't I hear from the defendants first,
13 Mr. Castellano.

14 Mr. Benjamin, were you going to speak for
15 everybody?

16 MR. BENJAMIN: Actually, I was going to
17 speak for myself, Your Honor, and then, actually, I
18 decided I'd rather talk to Mr. Sindel. So if I
19 could --

20 THE COURT: Go ahead. Y'all speak. You
21 can speak for yourself as well.

22 We're just going to take a break. So we'll
23 take our morning break, and I'm going to leave the
24 courtroom. But nobody else go anywhere. We're
25 recessing, but y'all need to stay in here. So

1 Ms. Wild will help people if they need to use the
2 restroom. But right at the moment, everybody stay in
3 here. But I'm going to leave, and my clerk is going
4 to leave. Maybe that will facilitate some stuff. So
5 we'll be in recess for about 15 minutes. But you
6 need to stay in the courtroom.

7 (The Court stood in recess from 10:28 a.m.
8 to 11:09 a.m.)

9 THE COURT: All right. I don't know why
10 I'm putting this burden on you, Mr. Benjamin, but do
11 you have a batting order? Do the defendants have a
12 batting order of the work they'd like for me to do?

13 MR. BENJAMIN: As to Joe Gallegos, we do
14 not, Your Honor.

15 THE COURT: All right. Anybody else? Any
16 of the other defendants want me to work on something
17 earlier rather than later? Do you feel like you need
18 some guidance, or want me to look harder at anything
19 I've done?

20 How about the Government? I'm on my own,
21 huh?

22 MR. CASTELLANO: None at all. We'll defer
23 to the defense.

24 THE COURT: All right. Mr. Cooper, did you
25 have some suggestions?

1 MR. COOPER: I think Ms. Johnson wanted you
2 to reconsider that severance.

3 (Laughter.)

4 THE COURT: Just stay working on severance.
5 All right.

6 MR. COOPER: Judge, seriously, I don't
7 think we have any preference.

8 THE COURT: I'll just keep working on the
9 severance, then. There is a lot there. I'm going to
10 roll them into this other. And then we've got the
11 Burke one coming up. But that's going to keep me
12 busy putting that together.

13 Okay. Second question is: Let me get my
14 calendar. With the trial starting July 10 for the
15 first 11 defendants -- or the first 11 that we're
16 going to try -- I think the Government had -- that's
17 a Tuesday -- I think the Government wanted to start
18 on a Tuesday rather than starting on Monday. No, the
19 10th is a Monday. I'm sorry. That was something
20 else, I guess. All right. How long does the
21 Government anticipate that the trial will last, given
22 the 11 defendants that are in that trial, and --

23 MS. ARMIJO: I believe in talking to all
24 defense counsel in both parts of the case, both the
25 first one and the second part, we'd anticipate six to

1 eight, no more.

2 THE COURT: How about, just give me the
3 first trial. How long is the first trial going to
4 last?

5 MS. ARMIJO: Six to eight weeks.

6 THE COURT: I severed them, so how long is
7 the first trial going to last?

8 MS. ARMIJO: I think six to eight weeks,
9 the first trial. Because I think the Government
10 thought that it would take about four. But I'm
11 getting from the defense eight. And so unless
12 somebody disagrees with me, I think that, in general,
13 some attorneys said six weeks. But to be safe, we
14 should probably say eight for the first trial.

15 THE COURT: All right. Any of the
16 defendants in that first trial of the DeLeon have any
17 different viewpoint?

18 All right. Let me talk to Mr. Cooper.

19 MR. COOPER: Judge, I think it's going to
20 be a lot closer to the eight, and I think we may even
21 exceed the eight weeks. Judge, we have four murders
22 that we're dealing with. And I think eight weeks is
23 conservative.

24 THE COURT: Well, I just got done with a
25 three-day murder trial, so just because it's a murder

1 doesn't tell us a whole lot. I know these may be
2 different, but just because it's a murder case,
3 doesn't tell us how long.

4 MR. COOPER: We have a lot of witnesses
5 that we expect are going to hit the stand, Your
6 Honor. I'm personally involved in the Counts 1 and
7 2; 2001 is when those murders were alleged to have
8 occurred. Just given the fact that we have 11
9 co-defendants, 10 maybe, maybe even 9, eventually, I
10 believe that eight weeks is a conservative number.

11 THE COURT: All right. I'll take eight
12 weeks, we'll block off eight weeks. But let's get it
13 tried in eight weeks. That's a lot of time for even
14 four murders. So let's -- I'll give you eight weeks.
15 I'll go with that estimate. And we'll set it aside.
16 But let's get it done. So I'm going to be monitoring
17 every day, going to be talking to everybody at the
18 end of the day: How are we doing? Are we on-track?
19 Let's keep it on-track, and we'll get it done in
20 eight days -- eight weeks.

21 Let me look, then, and see what that does
22 to us. That takes us the 10th, 17th, 24th, 31st;
23 those are the first four weeks. The 7th, 14th, 21st,
24 28th. So the trial will end on Friday, September
25 1st. Let me talk to Ms. Wild a second here.

1 (A discussion was held off the record.)

2 THE COURT: We had outlined these trials --
3 I mean, one of the things that we could do, we could
4 keep the trials that we have scheduled: Varela for
5 October, and then Baca for November, and then come
6 back and finish up the DeLeon. What's the
7 Government's thoughts about that?

8 MS. ARMIJO: Your Honor, I think our
9 position is that the -- all of the DeLeon case be
10 tried before the Baca case.

11 And, Your Honor, I know that the Court had
12 indicated that 1613 is not coming back next Friday.
13 But is there a way to bring them back? And I'll tell
14 the Court why. I think that -- we've all been
15 talking -- I think that, quite honestly, we are
16 working with Mr. Santos to try and get -- Mr.
17 Gonzalez, Santos Gonzalez -- to try and get his case
18 resolved. But our hands -- at this table our hands
19 are tied with Washington. And so we can't get that
20 resolved this morning. But I think that we may be
21 able to get that resolved, which would then give us
22 breathing room to continue cases.

23 The only issue then is the people in the
24 Baca case. I think we have one or two persons that
25 the Government needs to work with, as far as whether

1 or not there is anything we can do as far as a trial
2 date with them or not. And it would give us more
3 time to work with that. So that there is a
4 possibility that next Friday we could come and have
5 everything resolved. And if we're able to resolve it
6 beforehand, as far as the dates and everything, we
7 could probably take the Baca people off. But I think
8 that given everybody's schedule, and the time crunch,
9 that we could possibly work things out to where we're
10 not looking at any trial, other than maybe Garcia,
11 the drug trial in July. But we just need a little
12 bit more time given that Washington needs to weigh in
13 on things.

14 THE COURT: Well, here's my problem with
15 the Baca people. There is no motions to be heard.
16 And if Ms. Johnson's case goes away, there is nothing
17 to be heard next Friday. It's a whole lot of -- it's
18 hard for the marshals to put everybody together when
19 there is absolutely nothing that's going to be heard.
20 And it sounds like we're barreling toward a Friday
21 that doesn't have anything to be heard.

22 So I guess I'm reluctant -- I'm inclined to
23 just say let's have DeLeon, no Baca, because there is
24 no motions to be heard. It's just a glorified
25 scheduling conference. And we can do that today, or

1 y'all can try to work it out. But that's a lot of
2 work on the marshals to just bring them in for a
3 glorified scheduling conference.

4 Well, let's do this, this is what I'll do:
5 I'll set the trial. I'll just give y'all a
6 running -- I'll give you a trailing docket then. So
7 I'm going to put the rest of DeLeon on October 2.
8 We'll put Varela on October 2. We've got the trial
9 set for July 10. We'll keep Baca on for November.
10 And that will keep -- everybody has got a trial date.
11 We'll just see how it goes. It's a long time till
12 October 2, so I'm not going to start getting too
13 worked up about that. I think the visibility will be
14 clear. Let's plan on DeLeon 8:30 next Friday.

15 Ms. Johnson, if yours goes, you're going to
16 be first up. Do you have an estimate how long your
17 motions are going to take?

18 MS. JOHNSON: We're talking about the
19 motion to suppress and the motion for Jencks hearing,
20 Your Honor?

21 THE COURT: Yes.

22 MS. JOHNSON: The motion to suppress may
23 take -- depending -- I don't know if the Government
24 is going to call any witnesses, but that may take
25 maybe half an hour, 45 minutes, depending. And if

1 they call a witness, I would say maybe about an hour.
2 The Jencks hearing, obviously, that one is going to
3 be a lot longer. That may take a full day.

4 Your Honor, with regard to what Ms. Armijo
5 just mentioned, we have been -- the Government and
6 Mr. Gonzalez have been in negotiations, and I think
7 we're very close to resolving his case. However, I
8 would ask -- and I know it's in D.C.'s hands -- I
9 would ask that perhaps the Court order the
10 Government, so that they could relay this to
11 Washington, that you set a deadline. Because I have
12 actually blocked out pretty much the rest of the week
13 and the weekend and next week to work on motions in
14 limine. And so it would be nice to know if we're
15 going to resolve Mr. Gonzalez. I'd like to know, and
16 Mr. Gonzalez, I know, would like to know. Perhaps by
17 the end of today?

18 THE COURT: Well, how do you feel about
19 that, Ms. Armijo?

20 MS. ARMIJO: Well, one, this table over
21 here, at least the attorneys, are going to be
22 traveling from here to Las Cruces, a three-hour drive
23 with intermittent cell reception. And so I don't
24 think that's a good idea. They know. I spoke to
25 them last night. They know that we're in court

1 today. And I think I could probably get an answer.
2 But I don't know that I'll get an answer today. So I
3 would prefer not to have the Court order anything,
4 just because I don't want them to push back and just
5 say, Okay, well, then we just forget it.

6 THE COURT: Well, that's just not my style.
7 I don't get involved in plea negotiations. And that
8 seems to me getting my feet down the path. So I'm
9 not going to get involved in that.

10 MS. JOHNSON: Your Honor, what I was asking
11 was perhaps just a deadline.

12 THE COURT: That's just not my style. You
13 know, there are some judges that set deadlines on
14 pleas. If one of these guys wants to plea, you know,
15 we'll take a plea. But it's just not my style to get
16 involved.

17 MS. JOHNSON: I understand. So we'll be
18 ready for our motions.

19 THE COURT: All right. Now, it sounds like
20 what you're telling me is I can't set anything up in
21 other cases. Troup and Garcia want their motion to
22 sever teed up and heard on the 19th. So as far as
23 Garcia and Troup, be patient with me. If it doesn't
24 get heard, don't be upset with me if your expert
25 comes in. I have no control over it. We'll do Ms.

1 Johnson's motions first. If your expert is sitting
2 there, I can't do anything about it. So you might
3 want to be really talking to Ms. Johnson. But at the
4 same time, I don't want to set aside the 19th for
5 SNM, and then we not hear that motion. So I know
6 that's putting you in a bind. But it's called
7 litigation, right?

8 MS. HARBOUR-VALDEZ: Thank you.

9 THE COURT: How long do you think that will
10 take?

11 MS. HARBOUR-VALDEZ: My understanding, in
12 talking to Mr. Burke, is that we were going to forego
13 putting Professor Lieberman on the stand, and just
14 submit his affidavit. It was clear that the Court
15 had considered that, based on your comments on
16 Tuesday. If that changes, I will notify Ms. Wild.

17 THE COURT: Okay. Let Ms. Wild know. All
18 right. Do you know how long you think the motion
19 hearing will last for your motion?

20 MS. HARBOUR-VALDEZ: Without Professor
21 Lieberman, I think the motion to sever is 30 minutes.
22 And on the motion to compel, we've been in
23 conversations with the Government. We're going to
24 try to work that out. And that motion may go away as
25 well.

1 THE COURT: Okay. If Ms. Johnson goes
2 away, I'm going to give you two hours, and then I'm
3 going to go work on other stuff. So I'll give
4 everybody two hours that morning, and then I'm going
5 to fill it up with other stuff.

6 Okay. What else?

7 THE CLERK: That's all.

8 THE COURT: All right.

9 MS. DUNCAN: Your Honor, if I could have a
10 moment?

11 THE COURT: Certainly.

12 MS. DUNCAN: I was going to raise an issue
13 on Document 1124, which is our motion to -- with
14 respect to the tablets. We'd mentioned to the Court
15 that we asked the Government to preserve the tablets
16 of the informants who had tampered with them and
17 accessed the internet. And I wanted to clarify what
18 our request was. And I think the Government has now
19 agreed with our request. Our request is that for the
20 informants who tampered with their tablets, they
21 abused the Government's and Court's trust accessing
22 the internet. We don't know what they accessed. It
23 could be pornography, they could be communicating
24 with people about the case. So the tablets
25 potentially contain Brady and Giglio information. So

1 we'd ask the Government to conduct a Brady-Giglio
2 review of the informants' tablets, and to turn over
3 that information. My understanding, the Government
4 does not object to the request. So we wanted to put
5 that on the record to close out that motion.

6 THE COURT: Is that correct?

7 MR. BECK: I think I agree with the end of
8 it, that we will conduct a Brady and Giglio review.
9 I'm not sure I agree with her characterizations at
10 the beginning. But we understand our Brady and
11 Giglio obligation, and we will conduct a review.

12 THE COURT: Okay. I'm sorry, what did you
13 disagree with what she said?

14 MR. BECK: I think I disagreed with the
15 fact that it was a breach of the Government's trust.

16 THE COURT: Oh, okay, oh, the wind-up.

17 MR. BECK: Right. Yes. Where it came over
18 the plate, I saw that pitch clearly.

19 THE COURT: But the agreement, you agree
20 with what you agreed to do, right?

21 MR. BECK: Yes.

22 THE COURT: All right. What else, Ms.
23 Duncan?

24 MS. DUNCAN: That's it, Your Honor. Thank
25 you very much.

1 THE COURT: Thank you, Ms. Duncan.

2 All right. Ms. Wild, anything else?

3 All right. Is there anything else we need
4 to discuss while we're together? Anything else I can
5 do for you, Ms. Armijo? Mr. Castellano? Mr. Beck?

6 MS. ARMIJO: No, Your Honor.

7 THE COURT: How about from the defendants?
8 Anything else?

9 All right. I appreciate your hard work.
10 Be safe on your trips. See you next Friday in the
11 DeLeon case -- no Baca case -- 8:30.

12 (The Court was adjourned.)
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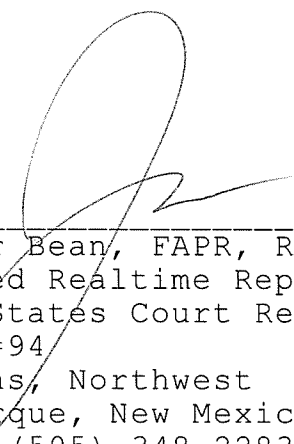
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UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on May 17, 2017.



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